IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1346 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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DASHRATHSINH SAMPATSINH RAJPUT - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR RAJESH M AGRAWAL for Appellant(s) : 1,MR YOGESH R AGRAWAL for Appellant(s) : 1,
MR KT DAVE, Additional Public Prosecutor for

Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 05/02/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE K. A. PUJ)

1. Though this Criminal Appeal is of 2006 it was taken up for final hearing pursuant to the order passed by this Court on 1.11.2006, whereby the appeal was admitted and expedited. At the time of admission of the appeal, Mr.R.M.Agrawal, learned advocate appearing for the appellant – original accused has stated that he has prepared paper book consisting of relevant documents and oral evidence which he would produce at the time of final hearing. Since the record and proceeding were with the Court, the paper book was dispensed with and the registry was

directed to place the matter for final hearing in the first week of February, 2007. In view of this order passed by the Court while admitting the appeal Mr.Agrawal has not pressed for bail application and it was accordingly disposed of. It is for this reason, present appeal is taken up for final hearing out of turn.

2. The appellant – original accused has filed this appeal under Section-374(2) of the Criminal Procedure Code, 1973 (for short 'the Code') against the judgment and order of conviction and sentence dated 13.07.2006 rendered by the learned Special Judge, Fast Track Court No.3, Surendranagar, in Special (NDPS) Case No.5 of 2001 convicting the appellant – original accused for the offence punishable under Section-8(c) read Section-17 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and sentencing him to suffer R.I of 10 years

with fine of Rs.1 lac (Rupees One Lac Only) and, in default of payment of fine further R.I of 2 years with a further direction that the period spent by him in jail shall be given set off against the sentence.

3. Briefly stated, the prosecution case as disclosed from the complaint as well as unfolded during trial, is as under :-

4. The complainant – Nankubhai Govindbhai Dharajiya – P.S.I. Chotila had lodged a complaint on 30.7.2001, being Chotila Police Station IInd Crime Register No.62/2001. When he was present as P.S.I in Chotila Police Station, he received information that one person was selling opium at Rajasthan Driver Hotel (Shekhavati) situated towards Rajkot on Chotila National Highway Road. The said information was recorded being Entry No.12/2001 at 11.05 hours in the station diary. A report for approval was sent to

learned JMFC, Chotila. As the gazetted officer was required for carrying out raid in respect of opium because the circle Police Inspector Chotila, who was gazetted officer, on inquiry being not available, a report was sent for accompanying the Executive Magistrate, Chotila in the raid as a gazetted officer. So the Executive Magistrate and Mamlatdar, Chotila arrived at 11.30 o'clock and the complainant appraised him about the information received by him. The Executive Magistrate asked to call two panchas. So a Police Constable – Raidhanbhai Ratabhai of his police station was sent to call two panchas and after some time he returned with two panchas viz. Hakabhai Somabhai Parmar, residing at Anandpur road at Chotila and Amarsinhbhai Savsibhai Sosa, residing at Rampara, Taluka – Chotila. The complainant and the Executive Magistrate appraised them regarding the information. Both of them agreed to be in panchas. Preliminary

panchnama was prepared between 11:45 and 12:00 o'clock. The panchas and the raiding party checked one another and no objectionable article was found. Thereafter, the complainant and a Police Head Constable – Jagjivanbhai Khodabhai and Mahendrasinh Lalubha and a Police Constable – Raidhanbhai Ratabhai and Ganeshbhai Lalabhai etc, with the panchas and the Executive Magistrate Chotila started in a police Jeep NO.P31/GJ-13-G-1083, for the said place of information. They arrived at about 12:10 o'clock to Rajasthan Driver Hotel (Shekhavati) at Chanpa Sim on the National Highway Road.

5. At the hotel they have seen one person sitting on the hotel counter. Upon asking his name and address, he stated it to be Dashrathsinh Sampatsinh Rajput, aged 22 years, residing at Chhau, Taluka – Udepur - Vati, Dist. Junjunu (Rajasthan) at present in Rajasthan Driver Hotel, Chanpa Sim. The

Executive Magistrate introduced himself and told that he is M.A.Sipoi – Executive Magistrate and Mamlatdar, Gazetted Officer, Chotila. A specific information was received that the opium was illegally sold at his hotel and so he was required to be checked. Upon asking him whether he was agreed to be checked by them, Dashrathsinh Sampatsing gave consent. Therefore, a search was made by keeping the panchas. One blue coloured jeans cloth bag, having written Ruf & Tuf, was found from the place of keeping feet on the counter where Dashrathsinh Sampatsinh was sitting. On opening the same, a hand kerchief, half pent, baniyan etc, were in the front pocket and on opening the second chain, black substance was there in a plastic bag. The said substance was taken out and upon asking the said person in presence of the panchas, he said it to be the opium. So a permit or pass for keeping the opium was demanded and he negatived the same.

Immediately the raiding party Police, Constable - Raidhanbhai Ratabhai was sent to call a businessman with scale and measures for weighing the opium from the Chotila village. One businessman – Sirajbhai Sadruddin Gilani, residing at Shastrinagar, Chotila came after about 15 minutes. He weighed the opium in presence of the panchas and it was 450 gram. The same was divided in three equal parts, each part of 150 gram. The same were placed in plastic bags and sealed as per the panchnama. One part of the sample was sealed and seized for sending in the Court of J.M.F.C, Chotila. The second part of 150 gram was also sealed as per the panchanama and seized for sending for analysis in FSL and the third part of 150 gram sample was seized for keeping in the Police Station. However, the cloth, hand kerchief, half pent etc, were taken out from the bag which was found at the feet of the accused and the empty bag was seized. A

search on the person of the accused was made and Rs.500/- was found from the pocket of the pent which was also seized. On making inquiry about the money, the accused stated in presence of the panchas that the money was from selling the opium by him. No other doubtful article, except this, was found from the search in the hotel. Thus, the complainant P.S.I, Chotila has lodged a complaint against the accused for keeping 450 gram opium without pass or permit under Section-8(c), 17 and 21 of the NDPS Act.

6. After filing of the complaint, the investigation was put into motion. During the course of investigation, the muddamal was sent to FSL for analysis and Investigating Officer recorded the statements and on receipt of the report from the FSL certifying that the muddamal sent for analysis was opium and as incriminating evidence was found against the accused person, he was charge-

sheeted before the learned Special Judge, Surendranagar under Sections-8(c), 17 and 21 of the NDPS Act.

7. The learned Special Judge, Surendranagar, to whom the case was made over for trial, framed charge against the accused for commission of the offence punishable under Sections-8(c), 17 and 21 of the NDPS Act which was read over and explained to him. As the accused pleaded not guilty to the charge and claimed to be tried, he was put to trial and tried in Special (NDPS) Case No.5 of 2001.

8. To prove the culpability of the accused the prosecution has examined and relied upon the evidence of 12 witnesses, details of which are given in para-4 of the impugned judgment and order and the same are as under:-

Sr.No.	Particulars	Exh.No.
1	P.W No.1 – Complainant – PSI - Nankubhai Govindbhai Dharjiya.	20
2	P.W No.2 – Police Head Constable - Jagjivanbhai Khodabhai Solanki.	28
3	P.W No.3 – Panch - Hakabhai Somabhai.	29
4	P.W No.4 – Panch - Amarsibhai Savsibhai.	30
5	P.W No.5 – Writer Head – Gangaram Amardas Solanki.	31
6	P.W No.6 – Police Constable – Usmanbhai Abdulbhai.	32
7	P.W No.7 – Sirajbhai Sadruddinbhai.	33
8	P.W No.8 – Valabhai Rupabhai.	35
9	P.W No.9 – Executive Magistrate – Mahamed Amirbhai Sipoi	36
10	P.W. No.10 – Bhagubhai Dadabhai.	37
11	P.W No.11 – PSO – Bhaidas Shivshankar Chaudhri.	38
12	P.W No.12 – Investigating Officer – Jitendrakumar Nanalal Joshi.	40

9. To prove the case against the appellant – accused, the prosecution has also produced and relied upon number of documents, details of which are as under :-

Sr. No.	***Particulars***	***Exh. No.***
01.	Letter written by PSI, Chotila.	21
02.	Extract from station diary Entry No.12/2001.	22
03.	Letter written to the Executive Magistrate.	23
04.	Panchnama.	24
05.	Original complaint.	25
06.	Letter written to the Chotila Court with regard to muddamal.	26
07.	Extract from the station diary Entry No.19/2001.	27
08.	Extract from the station diary Entry No.18/2001.	39
09.	Forwarding letter while sending the muddamal to FSL.	41
10.	Receipt issued by FSL showing receipt of muddamal.	42
11.	FSL Report.	43
12.	Extract from the station diary Entry No.13/2001.	44
13.	Letter granting written permission by JMFC, Chotila.	45
14.	Letter written to the District Superintendent of Police.	46
15.	Extract from the station diary Entry No.11/2001.	47

10. After recording of the evidence of the prosecution witnesses was over, the learned Special Judge, Surendranagar, explained to

the accused the circumstances appearing against him in the evidence of the prosecution witnesses and recorded his further statement under Section-313 of the Code. In his further statement, the accused has denied the case of the prosecution by reiterating that he has been falsely implicated.

11. On appreciation, evaluation, analysis and close scrutiny of the evidence adduced by the prosecution, the learned Special Judge, Surendranagar, has held that contraband article opium was recovered from the appellant and the prosecution has been able to establish that the complicity of accused for commission of the offences with which he was charged, has been proved beyond reasonable doubt, and therefore, he recorded the order of conviction and sentence against him to which reference is made in earlier paragraph of this judgment, giving rise to

the instant appeal at the behest of the original accused.

12. Mr.R.M.Agarwal, learned advocate appearing for the appellant – original accused has taken us through the oral as well as documentary evidence which are on record and also assailed the judgment and order of the learned Special Judge, Surendranagar dated 13.07.2006 rendered in Special (NDPS) Case No.5 of 2001. He has further submitted that the learned Special Judge, Surendranagar has erred in convicting the appellant though there was no cogent or adequate evidence showing his guilt in the matter. He has further submitted that the learned Special Judge, Surendranagar has failed to appreciate that the appellant is innocent and has not committed the alleged offence. He has further submitted that the evidence pressed into service by the prosecution is untrustworthy, unreliable and can never form

basis of conviction.

13. Mr.Agrawal has referred to the appeal memo, which is extensively drafted and which runs into almost 90 pages. He has, however, mainly addressed us on the point that the sealing procedure was very defective and as a result thereof the muddamal which was sent to FSL was not the same muddamal which was recovered from the appellant – accused and the possibility of tampering cannot be ruled out when the sealing procedure is defective. He has submitted that if the FSL Report Ex.43 and panchnama of seizure Ex.24 are seen, then the procedure of packing and sealing the samples is not as per the principles laid down by this Court in any decisions and the procedure of packing and sealing the samples was such that there remained all possibility of tampering with the contents of the samples or substitution of the substance and moreover, the defence has to show the

possibility of tampering and the prosecution has to prove that the procedure of packing and sealing the samples was full proof. He has submitted that on this ground alone, it cannot be said that what was alleged to be seized from the accused was the same thing which was sent for the analysis to FSL and FSL examined the same sample and gave report Ex.43. In support of this contention, he relied on the decision of this Court in the case of **Navinkumar @ Shambhuprasad @ Bapji Chimanlal Vyas V/s. State of Gujarat, 2006 (1) G.L.H. 409** wherein after considering earlier three decisions of this Court, namely, (1) Chandrakant Nagindas Modi V/s. State of Gujarat, 1989 (I) FAC 153, (2) unreported decision dated 17.08.2001 rendered in Criminal Appeal No. 323 of 1996 filed by Jitendra @ Sanjaykumar Suryakant Desai against State of Gujarat and (3) decision dated 07.05.2002 rendered in Criminal Appeal No. 287 of 1999 filed by Ganpatram Punmaram

Vishnoi against State of Gujarat, the Court held that as per the law laid down by this Court, the slips bearing signatures of the panch-witnesses should be affixed on samples and thereafter seals should be applied so that if any attempt is made to tamper with sample, the slips affixed would get torn. On re-appreciation of evidence, the Court was satisfied in that case that correct and fool-proof procedure of sealing was not resorted to by the Investigating Officer and possibility of tampering with muddamals was not ruled out at all. The Court has evaluated such deficiency in light of other discrepancies brought on record of the case and held that it was difficult to sustain conviction of the appellant – accused. The appeal was accordingly allowed and the appellant – accused was ordered to be released from jail forthwith unless his presence in jail was needed with reference to any other case.

14. In view of the above factual background and for non-compliance of the statutory provisions and keeping in mind the judicial pronouncements on the issues raised, Mr. Agrawal has strongly urged that no other finding except acquittal of the accused from the charges levelled against him would meet with the ends of justice.

15. Mr. K. T. Dave, learned Additional Public Prosecutor, on the other hand has supported the order and judgment of the learned Special Judge, Surendranagar and submitted that there was no violation of any statutory provision and all necessary compliances were made by the raiding parties and/or investigating agency and there was no substance in the argument that the statutory provisions were violated. So far as sealing procedure is concerned, Mr. Dave has relied on the decision of the Hon'ble Supreme Court in the

case of **Babubhai Odhavji Patel and Others V/s. State of Gujarat, 2005 (8) SCC 725** and submitted that there was no violation of the sealing procedure and it was properly followed by the raiding party and/or Investigating Agency and the conviction of the appellant – original accused cannot be disturbed on this ground.

16. Mr. Dave has further submitted that the prosecution has clearly established beyond reasonable doubt the charges against the appellant – original accused. He has further submitted that it is true that the prosecution case is merely based on the testimonies of the members of the raiding party consisting of the Police Officers and there is no independent corroboration to support the prosecution version. However, absence of independent corroboration and independent support would not render the prosecution version to be unacceptable in

light of the settled legal position. He has further submitted that the documentary evidence on the record of the proceedings clearly establish the involvement, presence and role of the appellant – original accused in the offences charged with. He has further submitted that all the mandatory provisions contained in the Act have been fully complied with by the members of the raiding party and, therefore, the prosecution having clearly established beyond reasonable doubt the guilt of the appellant – original accused, the conviction order passed by the learned Special Judge, Surendranagar is required to be upheld.

17.We have considered the submissions advanced by Mr. R.M.Agrawal, learned advocate appearing for the appellant - original accused and Mr. K.T.Dave, learned Additional Public Prosecutor, appearing for the State of Gujarat at length. We have also undertaken a

complete and comprehensive exercise of appreciating all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case. We have also gone through the entire testimonial collections. We have applied our mind to the impugned judgment and order passed by the learned Special Judge, Surendranagar convicting the accused and sentencing him for R.I of 10 years and fine of Rs.1 lac each and in default thereof, to undergo further R.I of two years each.

18. In order to find out whether the prosecution has established the charge against the accused beyond reasonable doubt and whether the learned Special Judge, Surendranagar has recorded a just and correct conclusion holding the appellant – original accused guilty, we may first advert to the oral

testimony of the prosecution witnesses.

19. The prosecution has examined P.W. No.1 - Nankubhai Govindbhai Dharajiya at Ex.20. He is Police Sub Inspector and he was on duty on 30.7.2001 when he received an information about the appellant – accused having contraband article with him. He has testified in his deposition about the entire incident. He narrated in detail as to how the raid was conducted, samples were drawn, panchanama was prepared etc. He has specifically stated in his deposition that on weighing the contraband article opium it was about 450 gram and 3 samples of 150 gram each were separately made and a slip duly signed by the Executive Magistrate, PSI as well as 2 panchas was kept in each of these samples. The prosecution has also examined P.W. No.9 - Mahmed Amir Sipoi at Ex.36. He was the Executive Magistrate at Chotila and he

accompanied the raiding party. He has also confirmed the fact in his deposition that the contraband article – opium weighing about 450 gram was divided into 3 parts of 150 gram each and they were kept in 3 separate bags and slip duly signed by panchas was kept in each of these 3 bags. Panchnama Ex.24 makes it clear that the bag recovered from the appellant – accused contained contraband article – opium which was weighed about 450 grams. It was divided into three equal parts weighing about 150 grams each. It was filled in plastic bag and slip duly signed by panchas was placed therein. Thereafter that plastic bag was put in cloth bag and it was stitched with needle and thread and thereafter seal of P.S.I Chotila was affixed thereon. Same procedure was followed in respect of other two bags. FSL Report produced at Ex.43 makes it clear that on opening the parcel Mark-A, a paper slip duly signed by panch witnesses as well as the

Executive Magistrate was found in the bag.

20. Though several contentions were raised before the Trial Court and before this Court, we confine ourselves to deal with the strong protest lodged against sealing procedure adopted by the prosecution. Even otherwise, we are not impressed by the other contentions raised by Mr.Agrawal, the learned advocate appearing for the appellant – accused. The main grievance was that the identity of the muddamal and samples sent to the FSL is not established. There was a possibility of tampering with the contents of the samples. The samples were not kept in safe and proper custody and the sealing procedure was absolutely defective. No proper procedure has been followed in affixing the seals used for sealing samples and so misuse of the seal for tampering the contents of the sample cannot be ruled out.

21. To examine and appreciate this contention, relevant provisions in the Act or Rules made thereunder touching this subject matter are required to be looked into. Section 55 of the Act deals with Police to take charge of articles seized and delivered. It provides that Officer in charge of police station shall allow any officer depositing the seized articles to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station. Except this, no provision seems to have been made in the present Act and Rules framed thereunder regarding mode of taking and sealing of the sample, mode of assigning the same to chemical examiner and their chemical examination or even touching the above matters. However, the Central Government issued Standing Instruction /

Orders. Standing Order No. 1/88 dated 15.03.1988, Standing Order No. 2/88 dated 11.04.1988 and Standing Order No. 1/89 dated 13.06.1989 are required to be looked into. Standing Instruction 1/88 speaks about procedure regarding drawl, storage, testing and disposal of samples from seized narcotic drugs and psychotropic substances. Standing Order No. 2/88 deals with receipt, custody, storage and disposal of seized/confiscated narcotic drugs and psychotropic substances. Standing Order No. 1/89 relates to general procedure for sampling, storage etc. Standing Instruction / Order No. 1/88 inter alia provides as under :-

(i) If the drugs seized are found in packages/containers, the same should be serially numbered for purpose of identification etc.

(ii) Samples must be drawn on the spot of recovery in duplicate, in the presence of search (panch) witnesses and the person from whose possession the drug is recovered.

(iii) The quantity to be drawn in each

sample should be 5 gms in respect of all narcotic drugs and psychotropic substances except in the cases of opium, ganja and charas, hashish where a quantity of 24 gms in each case is required. The same quantity should be taken for the duplicate samples also. The seized drugs in the packages/containers should be well mixed to make it homogeneous and representative before the sample in duplicate is drawn.

(iv) In the case of seizure of a single package/container one sample in duplicate is to be drawn. In case of seizure of more than one packages/container one sample in duplicate from each package/container should be drawn.

(v) All samples must be drawn and sealed in the presence of the accused, panchnama witnesses and seizing officer and all of them shall be required to put their signatures on each sample. The official seal of the seizing officer should also be affixed. If the person from whose possession the drugs have been recovered, wants to put his own seal on the sample, the same may be allowed on both the original and duplicate of each sample.

(vi) The sample in duplicate should be kept in heat sealed plastic bags. The plastic bags should be kept in a paper envelope and properly sealed. Such sealed envelope should be marked as original and duplicate.

(vii) The samples should be dispatched to the respective laboratories under the cover of a Test Memo which shall be prepared in triplicate in proforma NCB-1.

22.Despite the aforesaid Standing Orders / Instructions, the proper procedures are not being followed by the Investigating Agency and cases have come up before the Court. In the case of **Chandrakant Nagindas Modi V/s. State of Gujarat, 1989 (I) FAC 153**, this Court has taken the view that the muddamal was not properly sealed and there was all possibility of substituting the substance. Coupled with this, the fact that the muddamal remained with the police for more than two months raises a doubt. The prosecution has, therefore, failed to establish the offence beyond reasonable doubt against the appellant. The Court further held that this aspect has escaped the notice of the Learned Trial Judge and in view thereof, the Court allowed the appeal and acquitted the appellants.

23.In **Criminal Appeal No. 323 of 1996,** in the case of **Jitendra @ Sanjaykumar Suryakant Desai V/s. State of Gujarat** decided on 17.08.2001, the Court has taken the view that the contention regarding laxity in following the procedure relating to sealing of the seized contraband articles has some substance. After considering the evidence of the Investigating Officer and Panch witnesses, the Court has observed that after drawing the samples, at the time of sealing the samples as well as the remainder of the contraband seized, the slips containing signatures of the Panch witnesses and the Police Officer were placed inside the bags, thereafter the bags were stitched and wax seals were applied. There is no dispute that the Seal remains in custody of the police. The possibility of tampering with the muddamal at a later stage and then again resealing the same by the Investigating Agency cannot be ruled out. The very purpose

behind carrying out the search, taking of sample and sealing in presence of Panch witnesses is to ensure that there is no scope for any mischief in procedure required to be followed. At the time of sealing, slips containing signatures of Panch witnesses as well as the Investigating Officer are affixed on the articles seized and a seal is applied over it, so that, in case of any attempt for tampering with the article seized, the seal would be broken or the slip would be torn which would immediately reveal such an attempt. If the slip is put inside as was done in that case, the possibility of tampering cannot be ruled out. Under the circumstances, the Court held that the procedure followed for sealing in that case cannot be said to be proper and free from any possibility of tempering. The procedure,therefore, cannot be said to be beyond the scope of any reasonable doubt and in that event, benefit must go to the

accused.

24.This Court has again considered this issue in **Criminal Appeal No. 287 of 1999 in the case of Ganpatram Punmaram Vishnoi V/s. State of Gujarat** decided on 07.05.2002 Additional Public Prosecutor, as an officer of the Court, has pointed out in the case that no proper sealing has been done by the PSO and, therefore, possibility of tampering with the muddamal cannot be ruled out. The Court took the view in that case that the slip signed by the panchas as well as the PSO, which was kept along with the polyethylene bag is required to be affixed at the outer portion below the wax seal of the police station. If the police keeps the slip signed by the panchas and the PSO along with the sample muddamal and affix the seal of the police station at the outer portion of the bag, possibility of tampering the

muddamal cannot be ruled out as the official seal always remains with the concerned police station. The Court, therefore, held that it is obligatory on the part of the police to see to it that the slip signed by the panchas as well as the concerned Officer is affixed at the outer portion of the sample bag below the official seal of the police station. This procedure will totally rule out the possibility of any tampering with the sample muddamal. This has not been done in that case and hence, the Court held that the procedure adopted by the PSO cannot be said to be free from any doubt and the possibility of the tampering also cannot be ruled out. The Court held that in any case, the benefit must go to the accused.

25. All the aforesaid three judgments have been referred to and relied upon by this Court in its later decision in the case of **Navinkumar**

@ Shambhuprasad @ Bapji Chimanlal Vyas V/s. State of Gujarat, 2006 (1) G.L.H. 409 and also in the case of **Kamlaprasad Ramjiprasad Gupta And another V/s. State of Gujarat in Criminal Appeal No. 1366 of 1999 with Criminal Appeal No. 34 of 2000 decided on 21.09.2006** held that the slips bearing signatures of the panch-witnesses should be affixed on samples and thereafter seals should be applied so that if any attempt is made to tamper with sample, the slips affixed would get torn.

26. If we consider the procedure laid down in the aforesaid Standing Instruction / Order as well as the ratio of above referred five different judgments of this Court, in light of the facts found from the deposition of the Panch witnesses, Police witnesses and F.S.L. Report as well as from the documents produced on record, we have no hesitation in coming to

the conclusion that in the present case also, proper procedure has not been followed by the prosecution. The slips were loosely kept in the bag and they were not tied on the top of the bag over which the seals were affixed. There is no contradiction with regard to the placing of seal in the bag containing sample in the deposition of the police witnesses and the panchnama on one hand and FSL Report on the other hand. From this evidence it is clearly found that the slip was loosely kept in the bag and it was not affixed on each of the bag. The report further makes it clear that the proper procedure has not been followed by the raiding party and/or investigating agency. Because of this defective sealing procedure, serious doubt are raised about custody of muddamal article and tampering with the samples. We are therefore of the view that there may be a possibility of tampering with the contents of the sample before they were sent to FSL for

analysis. When there is possibility of tampering with the contents of the sample, then no reliance can be placed on the expert opinion and the report of the FSL and it cannot be said that the contraband articles were seized from the possession of the accused and that the sample therefrom was taken and that the sample was sent for analysis and that the report of the expert is regarding the same. When it is so, then the report deserves to be discarded in toto. Standing Instructions issued by the Central Government are violated as the sealing procedure has not been followed as per the said instructions. In light of this infirmity in sealing procedure, it is very unsafe to sustain the conviction order. Because of the fact that this Court has consistently taken the view that when the sealing procedure is not adopted in accordance with the provisions of the Act as well as the guidelines issued by the Central

Government and if other contradictions, inconsistencies and infirmities are found, in that case, , the conviction cannot be upheld.

27. In peculiar facts of the present case and in light of the decisions referred to herein above and the principles laid down therein, we are of the opinion that the conviction order passed against the appellant - accused cannot be sustained. The Appeal, therefore, succeeds. The order of the learned Special Judge, Surendranagar in Special (NDPS) Case No.5 of 2001 convicting the appellant – original accused for the offence under Section-8(c) read with Section-17 of the Act sentencing him to rigorous imprisonment of 10 years and fine of Rs. 1 Lacs and in default thereof, rigorous imprisonment for two years for commission of such offence is hereby quashed and set aside. The appellant – original accused is hereby acquitted from the

charges levelled against him. The respondent – State of Gujarat and the jail authority is hereby directed to release the appellant – original accused from jail forthwith unless his presence is required in connection with any other case. Amount of fine, if paid shall be refunded to him.

28. This appeal is accordingly allowed.

[A. M. KAPADIA, J.] [K.A. PUJ, J.]

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